# SPEECH

OF

## MR. CHOATE, OF MASSACHUSETTS,

ON THE

## POWER AND DUTY OF CONGRESS

TO CONTINUE THE POLICY OF

# PROTECTING AMERICAN LABOR:

DELIVERED

IN THE SENATE OF THE UNITED STATES

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# SPEECH.

The resolutions of Mr. CLAY being under consideration, one of which is in the following terms:

"*Resolved*, That, in the adjustment of a tariff to raise an amount of twenty-six millions of revenue, the principles of the compromise act generally should be adhered to, and that especially a maximum rate of ad valorem duties should be established, from which there ought to be as little departure as possible"—

Mr. CHOATE observed that he had wished to say something on one branch of one of the subjects to which the resolutions extended; he meant that of the readjustment of the tariff, as it might affect domestic industry. In his view, it was the great subject of the session and of the day. I agree, he said, with the Pennsylvania memorialists, whose petition has just been read, that the subject of the currency, difficult, delicate, and important as it is, and creditable as it will be to my friend from New York (Mr. TALLMADGE) and useful to the country to adjust it, bears no comparison, in point of importance, with this. We are coming, whether we will or not, by the progress of the compromise act, to an era in the history of the national industry and the national prosperity. We have it in our power to mark this era by the commission of a stupendous mistake, or by the realization of a splendid felicity and wisdom of policy. This very tariff which we are about to construct may, on the one hand, paralyze American labor, drive it from many of its best fields of employment, arrest the development of our resources of growth and wealth, and even the development of the mind and genius of America, our main resource, turning back the current of our national fortunes for an age; or it may, on the other hand, communicate an impulse, that shall be felt after we are in our graves, to that harmonized agricultural, manufacturing, and commercial industry, which alone can fill the measure of this or of any country's glory.

Under this impression of the importance of the subject, I have wished to take part in the discussion of it. In the present stage, however, of this business of arranging the tariff in the two houses of Congress; with no bill before us, with no report of either of the Committees on Manufactures, although we have had a very able speech from the chairman of our own committee, (Mr. SIMMONS,) unaided to any considerable and useful extent by the voice of the country, which, if I do not misunderstand the country, will come up, peremptory and unequivocal, the moment you have a bill reported, and before, if that is delayed much longer; I do not think it expedient, or even practicable, to go far into the consideration of details. I mean to abstain from them altogether at this time I move no question now about the amount of annual revenue which you will require for the

wants of Government, nor whether you should raise it from duties on imports alone, or partly from the proceeds of the public lands. I have nothing now to say about specific duties or ad valorem duties, horizontal or discriminating tariffs, home valuation or foreign valuation. The actual state of information before us, in parliamentary and authentic form, is not such as to make it worth while to anticipate that kind of discussion. But there is one preliminary and general principle upon which I shall consider myself obliged to stand; by which I shall consider myself obliged to try every question of detail that shall present itself, and which it may be as fair and proper to announce at this moment as at any other; and that is, that Congress has the constitutional power so to provide for the collection of the necessary revenues of Government as to afford reasonable and adequate protection to the whole labor of the country, agricultural, navigating, mechanical, and manufacturing, and *ought to afford that protection.* This general principle I shall take with me through all this investigation, and it is the only one which it is necessary now to declare. I mean by this to say that I shall enter on this business of the tariff with no unalterable predetermination as to the precise mode of effecting the grand object in view, although I certainly hold a very confident opinion that discriminating and specific duties will be found indispensable. But this I am ready to avow: that the protecton of American labor on all its fields, and in all its forms, is to be kept constantly and anxiously in view in all our arrangements; that you have the constitutional power to secure that protection; and that you are bound to do so, regardless of every thing and every body but the Constitution, justice, and a true and large American policy.

There can be no doubt then, it would seem, in the first place, on the constitutional power of Congress, in the assessment of duties of revenue, so to discriminate among objects of duty as to bring to life and to keep alive the whole multiform, agricultural, manufacturing, and commercial industry of the country. To state the immediate proposition which I mean to examine more precisely: You are about determining to raise a certain annual amount of revenue; twenty-six millions of dollars, if you please. The wants of Government require at least so much, whatever becomes of the land bill. The amount is fixed by reference to those wants. Now, without intending by any means to concede that this is the extent of your constitutional power—for certainly, in my judgment, it goes a great deal further; what I would say is, that, in assessing the duties which are to yield the amount thus determined on, you may discriminate for the protection of labor. You may admit some articles free, and just as many of them as you please, without any regard to the enumeration in the compromise act. You may prohibit the importation of others. You may admit some under specific, and some under ad valorem duties; some under a low rate, and some under a high one; some under a foreign valuation, others under a valuation at home; and others, or all, under that legislative pre-establishment of value which the Senator from Rhode Island (Mr. SIMMONS) proposes to substitue for fraudulent or mistaken estimates of actual and changeable value made abroad or at home. All this you may do; these varieties of proceeding you may choose between, with intent to bring out and sustain the domestic labor of America against the capital, the necessities, or the policy of foreigners, whether individuals or Governments. Upon the words of the Constitution, if it were an open question to-day,

this is clear. The history of the origin, construction, and adoption of that instrument demonstrates it. And then there is a weight of opinion, and a series of practical interpretation, which should put the matter forever at rest.

Mr. President, the Senate would hardly excuse me for assuming to offer a formal and laborious argument, as an original one, in proof of this matter. Delicacy, honor, and good sense, would forbid such an attempt to appropriate borrowed plumes. No man's ability or research could clothe the subject with any useful novelty; how much less can mine! I desire, therefore, only to recall to your mind the general nature and main points of an argument already and long ago familiar to you. And even this I should not venture on, if the state of opinion in the country and in Congress did not appear to render such a discussion seasonable and useful. Sir, the tendency of the time is to regard this protecting power as stricken out of the Constitution. I have even heard judicious men speak of it as an *exploded* thing. We reason, some reason; certainly not the honorable mover of these resolutions; but some reason as if it had been agreed some where, at some time, and by some body or another, that the power should never again be asserted or never again be exercised. They would persuade you that the people, nine years ago, to secure to themselves the peaceable enjoyment of their rights for nine years longer, had stipulated that, at the end of the time, they would surrender the principle of constitutional protection forever. For a fleeting term of possession; nothing in the life of a nation, nothing in the life of a man; they agreed to squander away the inheritance itself!

Now, sir, without pausing to inquire into the origin of this opinion, without pausing to inquire how far it may be attributable to the silent influence of the compromise act in unsettling the tone of the public mind, still less to debate the merits of that celebrated arrangement, or to judge between the sagacity, patriotism, and firmness of those who suggested and those who opposed it, I think it may not be unseasonable to ascend from that act to the contemplation of first principles. Let us turn from the stormy passions, and unconstitutional organizations, and extorted expedients of 1833, and breathe the pure and invigorating air of 1789! Let us see what our fathers framed the Government for, and what they expected of it.

I find your authority then, sir, to pass laws of protection where the calm and capacious intelligence of Mr. Madison found it in 1789, in 1810, and 1828. That great man, among our greatest of the dead or the living; who had helped so much to frame the Constitution and procure its adoption, defending and expounding it with his tongue and pen to his own Virginia, and to the whole country; who had weighed, ay, sir, and helped to coin and stamp, every word in it; and who knew the evils, the wants, the hopes, the opinions in which it had its origin, as well as any man ever knew why he removed from an old house to a new one; Mr. Madison, in 1789 sustaining in Congress that celebrated law laying impost duties for the support of Government, the discharge of the public debt, and the encouragement and protection of manufactures, in 1810, in a message to Congress, and in 1828, in his letter to Mr. Cabell; at the beginning, in the midst, and at the close of his career, first when his faculties were at their best, his memory of events recent, his ambition high; again with the utmost weight of his official responsibilities upon him, and again in

old age, when his passions were calmed, the measure of his fame full, and he looked round upon the wide-spread tribes of the people whom he had served, and who had honored him so long, and upon their diversities of interest and of sentiment with a parental and patriarchal eye; he found your authority always in the Constitution, and he found it in your "power to regulate commerce with foreign nations, among the several States, and with the Indian tribes." Let me read a passage from his speech in Congress in 1789, upon Mr. Fitzsimons's proposition to combine the objects of protection and revenue in the bill laying duties on imports.

"The States that are most advanced in population, and ripe for manufactures, ought to have their particular interests attended to in some degree. While these States retained the power of making regulations of trade, they had the power to protect and cherish such institutions. By adopting the present Constitution, they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here."—*James Madison, Gales and Seaton's Debates, old series, vol.* 1, *p.* 116.

In his message of the 5th of December, 1810, after adverting to a "highly interesting extension of useful manufactures, the combined product of professional occupations and of household industry," he observes, "how far it may be expedient to guard the infancy of this improvement in the distribution of labor, by *regulations of the commercial tariff*, is a subject which cannot fail to suggest itself to your patriotic reflections." His letter to Mr. Cabell, written in September, 1828, in which he defines his opinions upon the power more precisely, and produces a very strong argument in support of them, is known to every body. "The question is," he says, "whether, under the Constitution of the United States, 'the power to regulate trade with foreign nations,' as a distinct and substantive item in the enumerated powers, embraces the object of encouraging, by duties, restrictions, and prohibitions, the manufactures and products of the country? And the affirmative must be inferred from the following considerations;" which he proceeds to unfold and urge with that force of persuasive reason for which he was so remarkable.

I derive, then, your power to arrange duties, for the purpose of protection, from your power to regulate commerce. The "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." What does this language mean? *How, and by what means*, does the Constitution authorize you to regulate commerce, and *for what ends* to regulate it? The answer is, it authorizes you to regulate it, among other means, by the imposition of discriminating duties, or prohibitory duties on imports of foreign manufactures, or other articles, for the purpose, among other purposes, of encouraging domestic manufactures, and any and every other form of domestic industry.

The presumption, certainly, in the first instance is, that these words of the Constitution mean to communicate the power to pass any law, to do any act, for any purpose, which, in the general and political language of the country in 1787, was deemed and called an ordinary and usual governmental commercial regulation. You may regulate commerce. Then you may do it by any and all such means, and for any and all such ends, as formed at that time the known and usual means and ends by and for which Governments habitually regulated commerce. If you cannot do it by all such means, and for all such ends, you cannot by any, nor for any. All the known and usual modes, and all the known and usual ends, are committed to you, or none are so. This is the first and legal import, prima facie, of

so general a grant. The presumption in the first instance is, that this language was used in the sense which it was generally understood to bear when asserted of or applied to other Governments in other writings, or in the current speech of the age of the Constitution. If, in the contemporaneous written and spoken vocabulary, a "commercial regulation" comprised and meant a certain act, or certain classes of acts, a certain act for a certain purpose; if a law of England, or of one of the States, laying duties on imports for the encouragement of domestic labor, mechanical, manufacturing, navigating, or agricultural, was, in that vocabulary, held and called a common commercial regulation; one of the recognised and familiar exercises of the power to regulate commerce; the presumption is, that the words here mean what they meant every where else. If you can control this presumption by inspection of other parts of the Constitution, or of its general structure, or by other legitimate evidence, do so; but the burden will be on you. It was upon this presumption that the discussion in this body, the other day, upon the bankrupt law proceeded. To determine the nature and limits of your power to pass such a law, you inquired what bankruptcy meant, and what laws upon the subject of bankruptcy were, in the legal language of the time? The Senators from Delaware, (Mr. Bayard,) and from Missouri, (Mr. Benton,) who debated this subject so ably, in opposition to the bill, did not argue that, from the nature of this Government, the phrase "laws upon the subject of bankruptcy" must be supposed to mean less or more than the same phrase any where else. They treated it as a question on the meaning of language; and, assuming that the words in the Constitution meant what the same words meant elsewhere, they sought that meaning in the contemporaneous, popular, and technical vocabulary of the States, and of England. Just so here. To determine the nature and limits of this power to regulate commerce, to determine whether it enables you to construct a protecting tariff, inquire whether, in the political and popular vocabulary of 1787, such a tariff was an ordinary form and kind of commercial regulation. If it were, the doubt is resolved.

And now is it not indisputable that, at that day, what we now call a discriminating tariff for protection was universally known and described as one familiar and recognised kind of commercial regulation? and that a power of Government to regulate commerce was universally understood to include the power to make such a tariff? Sir, nothing is more certain. Nothing is more certain than that, by a concurrence of extraordinary circumstances, the expressions, *commercial regulations*, *regulations of trade*, *the power to regulate commerce*, *the power to regulate trade*, and the like, had acquired, in the political and popular language of the day, a definite and uniform sense; and that, according to that sense, a protecting tariff was a form of commercial regulation, and the power to regulate commerce included the power to construct such a tariff.

Go back, for a moment, in the first place, to the close of the war in 1783, and inquire what this language meant then. No other words, or combination of words, had so settled, so precise, and so notorious a signification. You remember how this came to pass. The discussions and the events of the twenty years before had given them currency, and fixed their meaning. They had been burned, and graven, as it were, into the memory of America. The disputes of England and her colonies, which brought on the Revolution, had turned on the extent of her power over

them. She asserted in 1764 an enlarged and a menacing extent of claim; a claim not only to regulate their trade, but to lay internal and external taxes, and to bind them in all cases whatsoever. They admitted the right to regulate trade; they admitted the right to do it by the imposition of duties on imports into the colonies, and on their imports into England; they admitted the right to do it for the purpose of developing and sustaining the manufacturing, mechanical, and navigating industry of the mother country; but they denied the right, for the first time asserted in the stamp act, to lay internal taxes. She asserted both rights; and from this conflict of the exactions of dominion, and the resistance of liberty, arose the discussions which preceded the war, and the war itself. Now, what I ask you particularly to remark is, that, in all the stages and in all the forms of this controversy; a controversy extending over twenty years; a controversy which addressed the reason and exasperated the feelings of all America, and made every body familiar with its topics and its vocabulary; *all the disputants on both sides agreed exactly on the nature of a commercial regulation, and of the acts which might be done under the power to make such a regulation.* Grenville, Lord North, Lord Chatham, and Burke, in England; and in the colonies, John Dickinson, the Pennsylvania farmer, Benjamin Franklin, the Boston mechanic, John Adams, the Massachusetts lawyer, whose energy and eloquence brought up a hesitating Congress to the Declaration of Independence, Sewall, the champion of Parliament and the crown, Jefferson, who first denied the right of England to exert either of the powers she claimed—these and a hundred others, some of whose names we know, while some have perished—*stant nominum umbræ!*—all who took part for you or against you in that, your "agony of glory," concur in this. All of them agreed that the long series of legislation by which England had laid duties on imports of the colonies, for the purpose of bringing out and sustaining her domestic industry of all kinds, were regulations of trade; all of them agreed that, if she had power to regulate the trade of the colonies, her protecting tariffs were clearly within the exercise of the power; and all of them at first, and most of them, even on the American side, down nearly to the Declaration of Independence, conceded to her that precise power. Taking their stand upon the nature of this power, and of the acts it authorized, those who sustained the claim of England argued that her right to lay internal taxes followed of course, while those who espoused the cause of liberty denied that it followed at all; but upon the nature of that power, and of the acts it authorized, if it existed, there was no diversity of opinion, and there was nearly a unanimous concession that it did exist. Every speech, every address, every public act, every essay, every pamphlet, all the written remains of that anxious and momentous controversy, which employed so many eloquent tongues and pens, and went, at last, to the arbitrament of war, prove this. It is wholly indisputable that if, in the year 1783, it were written or said that England, before the Revolution, and the States after it, had the power to regulate the trade of America, the writer or speaker meant to declare that England first, and subsequently the States, had the power, among other things, *to tax imports in order to protect manufactures, the arts, navigation, and agriculture; and that he was understood to mean so by all England and all America.*

Mr. President, I could not exhibit in a day all the evidence of this which breaks forth from every page of our Revolutionary and ante Revo-

lutionary political literature. You know how considerable a body of writing it is. It is familiar to the earlier and the maturer studies of Senators. You have not been inattentive to a class of compositions, some of which the masculine taste of Chatham did not refuse to rank with the best political writings of the master States of antiquity.

Let me read a few selections, however, in proof and illustration of the currency and the meaning of this language prior and down to 1783. Some of them, I know, have been accumulated and arranged for this purpose by others; and indeed the *principle* of this whole mode of argument, and the nature of the investigations by which it should be conducted, are suggested by Mr. Madison's letter. But I have not thought it proper to omit any for this reason; and some of them, I think, have not been adverted to at all.

In an anonymous pamphlet, published as early as August, 1765, entitled "Considerations on the propriety of imposing taxes in the British colonies, for the purpose of raising a revenue, by act of Parliament," of which I know only that it was one of the numerous and effective contributions of Virginia to the cause of colonial liberty, the writer, page 33, says:

"It appears to me that there is a clear and necessary distinction between an act imposing a tax for *the single purpose of revenue*, and those acts which have been made *for the regulation of trade*, and have produced some revenue *in consequence of their effect* and operation as *regulations of trade*." And again, page 34: "It is a common, and frequently the most proper, method to regulate trade by duties on imports and exports. The authority of the mother country to regulate the trade of the colonies being unquestionable, what regulations are the most proper are to be of course submitted to the determination of the Parliament; and, if an *incidental revenue* should be produced by such regulations, these are not, therefore, unwarrantable."

I ought to have reminded you that before this, in 1761, even James Otis, in that great argument upon the subject of writs of assistance which breathed (I may use the vivid expression of John Adams) "the breath of life into America," admitted, upon the ground of *necessity*, the power of England to pass her whole series of acts of trade "as regulations of commerce," while he utterly denied their validity as laws of revenue. Let me refer you to the glowing and remarkable analysis of that argument, contained in the letters of Mr. Adams to Mr. Tudor, written in 1818.

In October, 1765, the first Congress of the colonies assembled at New York to confer on the means of preserving the liberties of America, menaced by that new system of imperial policy of which the stamp act was the most palpable, most alarming, but not the only manifestation. Of the proceedings of this Congress we know little. Tradition has preserved something of the impression which the genius and eloquence of James Otis, and his profound knowledge of the interests, and his deep comprehension of the rights and unappeasable resentment for the wrongs of the colonies, produced on the assembly; but his words of fire are perished forever. There survive, however, of the labors of that body, a general declaration of rights, an address to the King, a petition to each House of Parliament, and a report of a committee on the subject of the colonial rights. I read you a sentence from the address to the King, which is repeated, almost in the very same words, in the report of the committee. You may find it in Pitkins's Civil and Political History, 1st vol., pages 185 and 453.

"It is also humbly submitted whether there be not a material distinction, in reason and sound policy at least, between the necessary exercises of parliamentary jurisdiction in general acts, for the amendment of the common law, *and the regulation of trade and commerce* through the whole empire, and the exercise of that jurisdiction by *imposing taxes on the colonies*."

In February, 1766, Dr. Franklin underwent his celebrated examination "before an august assembly," as the colonial writers of the day called the House of Commons; and to the question "was it an opinion of America, before 1763, that Parliament had no right to lay duties and taxes there?" he answered, "I never heard an objection to the right to lay duties to regulate commerce." See how fully this is confirmed by John Dickinson, in the second of the "Farmer's Letters," written in 1767.

"The Parliament," he observes, page 4, "unquestionably possesses a legal authority to regulate the trade of Great Britain and all her colonies. Such an authority is essential to the relation of a mother country and her colonies, and necessary for the common good of all."

He then adverts to the legislation of England for the colonies before the stamp act, makes extracts from the several statutes, beginning with 12 Car. 2, and then adds:

"All before the stamp act are calculated to regulate trade, although many of them imposed duties on it." "Great Britain," he proceeds in the same letter, page 9, "has prohibited the manufacturing iron and steel in these colonies without any objection being made to her right of doing it. The like right she must have to prohibit any other manufacture among us. Our great advocate, Mr. Pitt, in his speeches on the debate concerning the repeal of the *stamp act*, acknowledged that *Great Britain* could restrain our manufactures. His words are these: 'This kingdom, as the supreme governing and legislative power, has *always* bound the colonies by her regulations and *restrictions* in trade, in navigation, in *manufactures*—in every thing, *except that of taking their money out of their pockets without their consent.*' Again he says: 'We may bind their trade, *confine their manufactures*, and exercise every power whatever, except that of taking their money out of their pockets without their consent.'" "External impositions, (this is Mr. Dickinson's language, letter 4, page 17,) *for the regulation of our trade*, do not grant to his Majesty the property of his colonies."

"There is a plain distinction," Lord Chatham had said the year before, in one of those glorious efforts of his eloquence which so much endeared him to our fathers, and stirred their hearts like the sound of a trumpet; "there is a plain distinction between taxes levied for the purpose of raising a revenue and duties imposed *for the regulation of trade*, although some revenue might arise from the latter." We may regulate trade; such was his argument; we may regulate it by the imposition of duties; we may do it for the purpose of giving direction and development to the whole industry of the empire. But we cannot levy an internal tax for revenue.

Burke, whose long series of exertions for the rights of the colonies do him as much honor as the marvellous affluence of his genius, proceeds every where upon the same distinction, and uses every where the same language. "Without idolizing the trade laws," he says, in his speech on conciliation with America in 1775, "I am sure they are still, in many ways, of great use to us. But my perfect conviction of this does not help me in the least to discern how the revenue laws form any security whatsoever to the *commercial regulations*, or that these *commercial regulations* are the true ground of quarrel." And the year before, in his speech on American taxation: "This is certainly true, that no act avowedly for the purpose of revenue, and with the ordinary title and recital, taken together, is found in the statute book till the year 1764. All before this period *stood on commercial regulation and restraint.*"

Nearly at the same time the Congress which declared our independence, in a grave and lofty paper, in which they claimed for the colonies "the free and exclusive power in all cases of taxation and internal policy," avowed nevertheless,

"That, from the necessity of the case, we cheerfully consent to the operation of such acts of the British Parliament as are bona fide restrained to the *regulation of commerce* for the purpose of securing the commercial advantages of the whole empire to the mother country, and the com-

mercial benefits of its respected members, excluding every idea of taxation for raising a revenue on the subjects of America without their consent."

In 1774 and 1775, John Adams, in a series of papers, under the signature of Novanglus, vindicated the cause of American liberty against the King's Attorney General, Sewall, with a vigor and ability which gave assurance of the future champion of independence. These papers and those of his antagonist discussed all the points of controversy between England and her colonies, and reviewed the whole history of their original and their altered relations; and, exasperated and soured as the colonists had become, clearly and far as the eagle glance of the orator of independence already saw into the future, it is remarkable that then, even almost down to the battle of Lexington, this distinction was still recognised, and respected, and reasoned on.

"And from that time to this, (i. e. for more than a hundred years,) the general sense of the colonies has been, that the authority of Parliament was confined to the regulation of trade, and did not extend to taxation or internal legislation." "Duties for regulating trade we paid because we thought it just," &c. "As for duties for a revenue, none were ever laid by Parliament for that purpose until 1764, when, and ever since, its authority to do it has been constantly denied."—*Letters of Novanglus and Massachusettensis, pp.* 38, 39. *Feb.* 13*th*, 1775.

The ministry at length perceived the expediency of admitting the justice of a distinction with which England and America had become so familiar. In 1778 Lord North, aroused to the realities of his situation, and seeking to win the insurgent colonies from independence and from France, procured the passage of a bill which offered a compromise upon the precise basis for which they had so long contended. "It is expedient," such was the language of the bill, "to declare that the King and Parliament of Great Britain will not impose any duty or tax for the purpose of raising a revenue in the colonies, except only such duties as may be expedient to impose for the *regulation of commerce*" (St. 18, Geo. 3.) But, in the phrase of Paine, "the charm had been broken," and the tardy offer of conciliation was unheard, or distrusted, or distasteful, amid the voice of battle, by the hoarded up resentments of a whole people, to the spirit of liberty and to the passion of glory.

And now, what kind of regulations were those which the colonies so long and so universally conceded to England the right to make? Sir, they were, among others, what, in the language of this day, we call discriminating and protecting tariffs. They were laws imposing duties on imports, as you see by the passages I have selected, and imposing them for the purpose of encouraging the navigation and trade, and developing the manufacturing capacity and labor, that had seated England on the throne of the commercial world. "One thing at least is certain," says Mr. Madison in his letter to Mr. Cabell, "that the main and admitted object of the parliamentary *regulations of trade with the colonies* was the encouragement of the *manufactures* in Great Britain." They were designed, among other objects, expressly to secure to the English manufacturer the *home* market and the colonial market *for his fabrics*, and the *colonial* supply of his *raw materials*, against the competition which might reduce the price of the former and enhance the price of the latter. Other and broader objects they pursued, undoubtedly; but, for the purposes of this discussion, I speak only of this. For the accomplishment of this object they restrained, by heavy duties or by direct prohibition, the importation of foreign manufactures into the colonies; they discouraged the colonial manu-

facturers themselves; and they obliged them to send, in English ships, to English markets, and to English markets alone, the raw material, which English genius was to transfigure and refine into shapes of beauty and usefulness, to enrich and swell her commerce with the world. Read the titles and objects of that long succession of laws, in the argument of James Otis, to which I have alluded, and his burning commentary on them, and you will well comprehend the extent and energy of English governmental regulation. Read particularly pages 213 and 294 of the letters of Novanglus and Massachusettensis, and Pitkins's Political and Civil History of the United States, 1st vol., page 401. Read the celebrated preamble of the act of navigation itself.

"In regard his Majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of *England, for the maintaining a greater correspondence and kindness between them*, and keeping them in a firmer dependence upon it, and rendering them yet more beneficial and advantageous unto it *in the further employment and increase of English shipping* and seamen, vent of *English woollens*, and other manufactures and commodities, *rendering the navigation to and from the same more safe and cheap*, and making this kingdom *a staple*, not only of the commodities of those plantations, but also of the commodities of other countries and places, *for the supplying of them*; and it being the *usage* of other nations to keep plantations trade to themselves," &c.

Upon the policy here so vigorously sketched, that whole series of regulations of trade reposed. They may all be summed up under the terms of this description; that they were a body of English law, designed by the regulation of the commerce of England and her colonins with each other, and the rest of the world, to develop, to its utmost capacity, the labor of the British empire, in all its forms, according to the discretion of the imperial Parliament.

I hold it then, sir, clear and indisputable, that, down to the close of the war with England in 1783, the phrase "commercial regulations," in the understanding of every body, included discriminating protecting tariffs; and that when it was said that, before the Revolution, England had the power to regulate commerce, and that, after the declaration of independence, the States had it, it was meant, in the understanding of every body, that she first, and then they, could make such tariffs. So much is certain.

And now, when you consider that the Constitution was made only four years later; that it was made by and for the generation which had gone through the war and the whole preparatory controversy; that many of those who shared in that controversy, and were most familiar with its topics and its terms, were still alive, in the Convention, or mingling with the people; the presumption undoubtedly is, that this language continued to bear the same sense down to the date of the Constitution, and that it means in that immortal production just what it means in all the other written and spoken speech of the day. But I do not leave this upon what I should have deemed a resistless presumption. To show you that such was the fact, that its meaning remained unaltered to 1787, and that it was inserted into the Constitution precisely *because that was its meaning*, I proceed now to lay before you another kind of evidence, and, as I think, a conclusive body of it.

It is not wholly unworthy of remark, that that which I may call the *colonial*, *controversial*, and *technical* use of this language; that use of it which I have been illustrating; was exactly in conformity with its literary, general, and popular use. Mr. Verplanck observes, in his letter to Col. Drayton, that Adam Smith calls those restrictive tariffs to which he ob-

jects commercial regulations. This is true. He sets the system of free trade and that of commercial restraint in contrast; and that whole body of prohibitions, taxations, and general policy, designed to foster domestic labor, he assails under the name of "commercial regulations." And as his work was first published in 1779, it may be presumed, and indeed is known, to have begun to attract the notice of intelligent persons as early as the period immediately after the war, and thus to have contributed to diffuse, impress, and define the sense of the language we are considering.

It is a fact, which bears still more directly upon the point of inquiry to which I have arrived, that after the war several of the States imposed duties, more or less heavy, on imports of foreign manufactures, avowedly for the purpose of sustaining their own manufactures, and that these tariffs were commonly called, in the language of our politics between 1783 and 1789, *commercial regulations*. Massachusetts, New York, Pennsylvania, and I believe other States, had done this. "It is happy for the mechanics in America (says a writer of Maryland, at some time between 1783 and 1787, American Museum, vol. 1, page 215) that they have met with the protection and encouragement of Government in several of the wisest States." I cannot resist the pleasure of referring to the act of the State of Pennsylvania on this subject, passed in 1785, and of marking the good sense and the forecast which it exemplifies. It recites that divers useful arts and manufactures had been gradually introduced into that State, which had been able, during the war, to supply in the hour of need weapons, ammunition, and clothing, without which the war could not have been carried on; and then proceeds in section 2:

"And whereas, although the fabrics and manufactures of Europe and other foreign ports, imported into this country in times of peace, may be afforded at cheaper rates than they can be made here, yet good policy and a regard to the well-being of divers useful and industrious citizens, whowere employed in the making of like goods in this State, demand of us that moderate duties be laid on certain fabrics and manufactures imported, which do not interfere with, and which (if no relief be given) will undermine and destroy, the useful manufactures of the like kind in this country."

A writer in the American Museum, on American manufactures, to whom I will refer you more particularly before I have done, at sometime before 1787, warmly commends the noble example of Massachusetts in this particular. (Am. Mus., 1st vol., page 23.) Now, these impositions of duties for this purpose, by the States, all impositions of duties on imports of the States were called *commercial regulations* by our writers and speakers of the period after the Revolution and before the Constitution. "While the States," said Mr. Madison in the debate in 1789, to which I have referred, "retained the power of making regulations of trade, (referring palpably to these legislative taxations on imports,) they had the power to protect and cherish manufactures." They were denominated *commercial acts*, *trade laws*, and *regulations of commerce*, indifferently and universally, in the current language of the time. Tench Coxe, in an inquiry into the principle of a commercial system for the United States, written before the adoption of the Constitution, describes and complains of them under all those appellations. (Am. Mus., 1st vol., 444.) I suppose it out of all doubt that if, at that time, it had been written or said that the States had the power to regulate commerce, as very frequently in those very words it was written and said, every body would have understood it to be meant that this included, as one of its commonest exemplifications and exertions, a power to make a protecting tariff. When that precise form of

speech was then embodied into the Constitution, did it not mean the same thing?

But, to put this matter at rest, let me ask you to look a little more at large into that considerable body of writings which appeared in the States, between the peace of 1783 and the adoption of the Constitution, upon the subject of a new Constitution. A word first on their general character.

You know how soon after the war an opinion began to prevail that the country needed a stronger Government. Suggested at first, like the Revolution itself, by the *intelligence* of the community, it spread fast and far; the events of every day gave it diffusion and strength; it possessed itself at last of the general mind, and the Constitution was the result. During the progress of this opinion, it produced a great deal of discussion. These writings, into which I wish you now to look, are the fruits of that discussion, and embody its topics and its language. Less known than the more lofty and classical controversial literature of the more glorious revolutionary and ante revolutionary time, they are to us the most interesting and most instructive writings in the world. No man, I could almost say, can understand the Constitution without the study of them. No man can understand the nature of the new remedial law until he has meditated the disease which it was made to cure, in these vivid pictures of it. No man can understand the vocabulary of the Constitution until he has familiarized himself, in these writings, with the current vocabulary of the people, by whom and for whom it was composed. The defects of the old confederation; its utter insufficiency for our greatness and our glory; the evils which bore the people to the earth, and made their newly acquired independence a dreary and useless thing; the disordered condition of the currency; our exhausting system of trade; the action of conflicting and inadequate commercial regulations of the States; the excessive importations of foreign manufactures; the drain of specie; the stagnation of labor, oppressed and disheartened by a competition with all the pauper labor of all the world; the depression of agriculture, sympathizing with other labor by an eternal law; the need of a system of divided and diversified employments, which should leave no one over-crowded, should leave no man's faculties undeveloped and unexcited; which should give a market and a reward to all industry; the wants, sufferings, fears, wishes; the universal stimulation of mind and fermentation of opinions in which the Constitution had its birth; you find them all there, and you find them no where else.

Looking with some labor into a collection of part of these writings in the American Museum, a work embodying the general spirit of the press from 1783 to 1787, I think I find conclusive evidence of this fact, to wit: that a confident and sagacious and salutary conviction came to be generally adopted; 1st. that one capital source of the evils which oppressed us was the importation of too many foreign manufactures, and the use of too few domestic manufactures; too much encouragement of the foreign laborer, and too little encouragement of our own; 2d. that a new and more perfect union and a stronger Government were required, among other ends, very much for the cure and prevention of this precise evil; and 3d. that, in order to effect this end, the new Government must be clothed with this *specific power of regulating trade, whereby it could check the import of foreign manufactures*, by duties and prohibitions, and thus bring to life and keep alive domestic manufactures, and with them the

entire labor of America. If this is so, it will prove at once, *first*, that this language retained the same signification in 1787 which it had borne in 1764; and, *next*, that it means in the Constitution just what it meant every where else, and was inserted there *because* it bore that meaning. Let me ask your attention, then, to some evidence and illustrations of the fact, to which I might add a thousand.

In the first volume of the collection I have referred to is an article on American manufactures. It is continued through three months of the Museum, and was written in Maryland at some time after 1783, and before 1787. The proposition which the essayist maintains is, that manufactures ought immediately to be established in the United States. In support of this, he reasons forcibly and zealously, and with much maturity and breadth of view, considering the time when he wrote; presents a vivid exhibition of the uses of manufactures and of manufacturing industry; of the rank they hold in all civilized States; of the division of labor which they render practicable, and the influence of that division in stimulating all the faculties of men and nations, and in supplying to each faculty and each mind its favorite employment and adequate reward; and, above all, he urges the actual evils which were weighing the country down; its foreign debt; its ruinous consumption; its expensive tastes; its incomplete development of industry; its deficiency in the means of self-reliance, and self-support, and self-regulation, as a decisive argument for his purpose. He goes on then to inquire how manufactures may be introduced and sustained; and his scheme is, *a Government which should have power to regulate trade, and in the exercise of that power should, among other expedients, impose duties on imports of articles coming in competition with the domestic labor.* "I am convinced," he says, page 212, "that to begin at this juncture the establishment of manufactures will be the only way to lay the foundation for the future glory, greatness, and independence of America." "Well, how, then," he asks, "shall we make the beginning?" "Free trade," he argues, "in our situation, adopting the sentiment of Montesquieu, 'must necessarily lead us to poverty.'" "A State whose balance of trade is always to its disadvantage cannot grow rich." We must have regulated trade, then. "But, we are told by some," he proceeds, "that trade will regulate itself." Hear how he combats this proposition, and what is the precise *regulation of trade* which he urges upon the statesmen of America.

"If trade will regulate itself, why do the wisest and most prosperous Governments make laws in favor and support of their trade? Why does the British Parliament employ so much time and pains in regulating their trade, so as to render its advantages particularly useful to their own nation? Why so preposterous as to abide by and enforce their boasted navigation act? But so far is trade from regulating itself, that it continually needs the help of the legislation of every country, as a nursing father. If we Americans do not choose to regulate it, it will regulate us, till we have not a farthing left in our land. Trade, like a helpless infant, requires parental care, and to be well looked after; for, says the same excellent author: 'A country that constantly exports fewer manufactures or commodities than it receives will soon find the balance sinking; it will receive less and less, till, falling into extreme poverty, it will receive nothing at all.' The truth is, trade regulates or corrects itself just as every thing else does that is left to itself. The manner the late war, for instance, would have corrected itself, had we supinely sat still and folded our arms together, would have been such a correction as I hope no person who makes use of this flimsy argument would wish to have taken place; *and unless we shortly regulate and correct the abuses of our trade by lopping off its useless branches and establishing manufactures*, we shall be corrected perhaps even to our very destruction."

"The mechanics," he continues, "hope the Legislature will afford them that protection they are entitled to; for, as the present baleful *system of trade* and searcity of cash occasion numbers

of them to want employment, though they are able and ready to furnish many articles which are at present imported, and as many of their branches are fast declining, and some are likely to become totally extinct, they conceive *that duties ought to be laid on certain imported articles in* such a manner *as to place the American manufacturers on the same footing as the manufacturers* of Europe, and enable them to procure bread and support for their families." And then, in further explanation, he adds: "An excessive duty might be only an encouragement to the smuggler; on the other hand, let them be only so high as to enable the manufacturer to procure a decent subsistence for his family.

Mark two things in this argument and these extracts: *the advice to encourage domestic manufacture* by duties on foreign manufacture, *and the use of language* which calls such an impost, for such an object, *a regulation of trade.*

I should never have done, sir, if I attempted to read all the proofs which I find in these papers, that the importance of establishing American manufactures seems, even then, to have been generally apprehended; and that a powerful and an immediate impulse was expected to be given to them, in some way, by the new Constitution. The concurrence of opinion upon that point is marvellous. It is still more marvellous, the maturity of the public judgment upon the nature and uses of manufacturing industry, and the very considerable extent to which that industry already had taken root, when you consider with what severity the austere and long dominion of England had pressed upon it; and how short and how unpropitious the time had been for the arts of peace to grow, after that dominion had passed away. But I must confine myself closely to selections which illustrate the meaning and objects of the constitutional phraseology. Let me, however, read a passage or two from a series of letters, by a North Carolinian, under the signature of Sylvius. I find them in the 2d volume of the Museum, page 107, and they appeared in August, 1787. His cure, too, for the oppressive indebtment, depreciated currency, scarcity of money, exhausting importations, and, what he calls, luxurious appetites of the day, is the encouragement of American manufactures, and the substitution of a tax on imported manufactures for all other modes of taxation.

"The more I consider (says he, page 108) the progress of credit and the increase or wealth in foreign nations, the more fully I am convinced that paper money must prove hurtful to this country; that we cannot be relieved from our debts except by promoting domestic manufactures; and that during the prevailing scarcity of money the burdens of the poor may be relieved by altering the mode of taxation."

Addressing himself to the second of these propositions, he adverts to the appalling enlargement of the foreign debt since the peace; to the fact that it has been contracted for clothing; clothing for the master; clothing for the slave; furniture; "saws, hammers, hoes, and axes, as if," says he, "the wolf had made war against our iron as well as our sheep;" Irish butter and beef, and British ale, porter, and cheese, "as if our country did not produce barley, hops, or black cattle;" hazle and oak sprouts under the name of "walking sticks;" luxuries of all denominations, swelling it in three years to six millions of dollars; and then exclaims:

"Let us turn our attention to manufactures, and the staple of our country will soon rise to its proper value, for we have already glutted every foreign market. By this expedient, instead of using fictitious paper, we shall soon obtain hard money sufficient; instead of toiling in the field, and becoming poor, that we may enrich the manufacturers of other countries, we shall prosper by our own labor, and enrich our own citizens." "Every domestic manufacture is cheaper than a foreign one, for this plain reason: by the first, nothing is lost to the country—by the other, the whole value is lost; it is carried away, never to return. It is perfectly indifferent to this State or

to the United States, what may be the price of domestic manufactures, because that price remains in the country."

He proceeds then to recommend a substitution of an excise on foreign manufactures sold in the State for other modes of taxation; and, although I do not find here an illustration of the meaning of the words which I am investigating, you will be struck with the confidence with which he presses the grand elementary suggestion of a tax on foreign labor for the encouragement of home labor.

"All wise Governments (such is his argument, page 124) have thought it their duty, on special occasions, to offer bounties for the encouragement of domestic manufactures; but an excise on foreign goods must operate as a bounty." "I have said that an excise is more favorable to the poor than a land or poll tax. I will venture an additional sentiment: there never was a Government in which an excise could be of so much use as in the United States of America. In all other countries, taxes are considered as grievances. In the United States, an excise on foreign goods would not be a grievance: like medicine to a sick man, it would give us strength; it would close that wasteful drain by which our honor and our wealth are consumed. What, though money was not wanted—though we did not owe a florin to any foreign nation—though we had no domestic debt—and though the expenses of civil government could be supported for many years without a tax, still it may be questioned whether an excise would not be desirable. It would certainly be the best expedient for promoting domestic manufactures; and the condition in which we now live, our general dependence on a foreign country for arms and clothing, is dishonorable—it is extremely dangerous."

"It is the duty of the statesman either to check or to promote the several streams of commerce by taxes or bounties, so as to render them profitable to the nation. Thus it happened in Massachusetts. A tax of twenty-five per cent. was lately imposed on nails, and the poor of Taunton were immediately returned to life and vigor."

"If any man has doubts concerning the effect of large taxes on foreign manufactures, he should turn his eyes to the Eastern States. The mechanic is generally the first who perceives the effects of a pernicious commerce; for the support of his family depends on his daily labor." "Hence it is that the merchant may be profited by a particular branch of commerce, and may promote it diligently, while his country is sinking into a deadly consumption."

You have heard the early and the mature good sense of North Carolina. Listen to a sentence or two from an essay "on the advantages of trade and commerce," written *at Charleston* in South Carolina, in 1786, and consider what inferences it suggests upon the general subject of the public opinion of that eventful day. It is signed "*American*," and breathes the very spirit of commercial, political, and industrial union; of union for defence against the arts as well as the arms of the world. "There are but two ways to national wealth, (he begins,) conquest and the encouraging of agriculture, manufactures, and commerce." This he illustrates historically. England at first was poor; "but as soon as the spirit of manufacturing raised its head, *and commerce was regulated by good laws*," (is it not palpable that he means the protecting tariff, behind which that intellectual industry has so splendidly developed itself?) "they rose superior to every obstacle." (American Mus., 2d. vol., pages 328 and 329.)

"It is in vain (he continues, page 330) for any people to attempt to be rich, or have a sufficient circulating specie among them, whose imports exceed their exports; the hand of the manufacturer in a distant land seems to act upon gold and silver as the loadstone does on the needle."

Again, after adverting to a revenue of three millions and a half raised by England, and by monopolizing our trade, he proceeds, (page 331:)

"A great part of this may be saved to these States by our becoming our own merchants and carriers; and a great part of the remaining sum may be saved in a few years by *encouraging* our own manufactors; and even this encouragement will be of service to our revenues—I mean laying a duty on our imports, and giving a small part in bounties to our own tradesmen."

By tradesmen he means mechanics. And to the suggestion to turn planters into manufacturers, he answers:

"I by no means wish it. I only wish to encourage European tradesmen to come to reside here. I wish to see as much as possible exported, and as little imported. The planters that buy the manufactures of America stop so much money in this country, which must return again to the planters' hands as long as traders eat."

Duties of encouragement, let me observe in passing, he calls "restrictions on the British trade." Sir, the name of the writer of this paper is unknown to me. And yet, when I compare the spirit, the sagacity, the American feeling which mark his matter with the language and the policy of later days, and more famous names, I can hardly forbear to exclaim of his humble and forgotten speculation—

"That strain I heard was of an higher mood."

I must hurry away from the accumulations of proof before me, which bear on the general subject; the formation of associations to encourage manufactures, the resolutions of the patriotic society of Richmond, of the ladies of Halifax in North Carolina, and of Hartford in Connecticut, and of the Legislature and Executive of Massachusetts to effect this by individual and organized exertion, and all the other indications which break from the universal press of that stirring and anxious time, and which show you with how true an instinct the genius of America was turning itself to take hold on the golden key that opens the palace of national wealth and greatness; I must hurry from these to call your attention to some others more immediately applicable to the proposition which I am maintaining. Look, then, for a moment, into an address by a "Jerseyman," in November, 1787, to the citizens of New Jersey, on the new Constitution. Hear him, one of the people, appealing to the people with the open book in his hand, speaking the language of the people—hear him on the clause which you are attempting to interpret:

"The great advantages, (Amer. Mus., 2d vol., page 437,) which would be the result of the adoption of the proposed Constitution, are almost innumerable. I will mention a few among the many. In the first place, the proper regulation of our commerce would be insured—the imposts on all foreign merchandise imported into America would still effectually aid our continental treasury. This power has been heretofore held back by some States on narrow and mistaken principles. The amount of the duties since the peace would probably, by this time, have nearly paid our national debt. *By the proper regulation of our commerce* our own manufactures would be also much promoted and encouraged. Heavy duties would discourage the consumption of articles of foreign growth. This would induce us more to work up our raw materials, and prevent European manufacturers from dragging them from us, in order to bestow upon them their own labor and a high price before they are returned into our hands."

Just then, too, a Pennsylvania patriot, under the signature of "One of the People," was making a similar appeal to the intelligence of that great State on behalf of the new Constitution. And how does he interpret this grant of power?

"The people of Pennsylvania, in general, are composed of men of three occupations—the farmer, the merchant, the mechanic. The interests of these three are intimately blended together. A Government, then, which will be conducive to their happiness, and best promote their interest, is the Government which these people should adopt. The Constitution now presented to them is such a one. Every person must long since have discovered the necessity of placing the exclusive power of regulating the commerce of America in the same body; without this it is impossible to regulate their trade. The same imposts, duties, and customs, must equally prevail over the whole, for no one State can carry into effect its impost laws. A neighboring State could always prevent it. *No State could effectually encourage its manufactories*—there can be no navigation act. Whence comes it that the trade of this State, which abounds with materials for ship building, is carried on in foreign bottoms? Whence comes it that shoes, boots, made-up clothes, hats, nails, sheet-iron, hinges, and all other utensils of iron, are of British manufacture? Whence comes it that Spain can regulate our flour market? These evils proceed from a want of one supreme con-

trolling power in these States. They will be all done away by adopting the present form of government. It will have energy and power *to regulate your trade and commerce*—to enforce the execution of your imposts, duties, and customs. Instead of the trade of this country being carried on in foreign bottoms, our ports will be crowded with our own ships, and we shall become the carriers of Europe. *Heavy duties will be laid on all foreign articles which can be manufactured in this country*, and bounties will be granted on the exportation of our commodities; *the manufactories of our country will flourish*; our mechanics will lift up their heads, and rise to opulence and wealth."

And a little after this, in July, 1788, I find a "Bostonian" (Am. Mus., 4th vol., 331st page) advising duties on English importations, under the name of regulations and restrictions of trade for the encouragement of our own manufactures.

"The ill policy of our *commercial arrangements* has served to impoverish us in our finances, by the enormous remittances of our currency, occasioned an almost general bankruptcy, and has had the pernicious tendency to discourage our enterprise in manufactures, and ruined many of those branches which, during the war, had arisen to a flourishing state." "Our trade with that nation has been the principal source of all our misfortunes. It has thrown a number of our best estates into the hands of British merchants, has occasioned a most rapid decrease of our medium, has ruined our manufactures, and will, if pursued, sap the foundation of the best Government that ever can be established in America. The first object, therefore, of the Federal Government must be to restrain our connexion with Great Britain, unless on terms of reciprocity. While they continue their duties and prohibitions, *we must lay similar restrictions and embarrassments on their trade, and prevent, by excessive duties, the redundance of their manufactures.*"

Some time in the year 1783 or 1784, there were published in a Virginia newspaper, "Reflections on the policy and necessity of encouraging the commerce of the citizens of the United States," by St. George Tucker, of Petersburg. They are written with great vigor, good sense, and a true national spirit, and present a powerful argument for a discrimination in favor of American tonnage. Towards the close of the essay, (page 274 of the 2d vol. of the Am. Mus.,) he adverts to another subject in the following terms:

"Before I conclude, let me call the attention of my reader for a moment to the debt due from America to the subjects of Great Britain, which I have heard estimated at four or five millions of pounds. This debt was accumulated from a balance in trade annually accruing to Great Britain from the causes hereinbefore pointed out. That trade must be destructive where such a balance continually arises against us. Surely it is proper to guard against such an event in future. This might be effected, in part, perhaps, by laying heavy duties, if not actual prohibitions, on the importation of such articles as are the produce of the United States. Is it not surprising, for example, that bar-iron, lead, saltpetre, leather, train-oil, tallow, candles, soap, malt liquors, butter, beef, pork, and potatoes, should constitute a part of the annual imports from Europe to America?"

Did not this writer understand that legislation, for the purpose of turning the balance of trade in our favor, was a "regulation of trade," and is not the protecting tariff which he recommends exactly an instance of such legislation?

I spare you, sir, the infliction of more of these superfluous proofs. And yet the nature of the fact to be proved; that a whole people, a whole generation of our fathers, had in view, as one grand end and purpose of their new Government, the acquisition of the means of restraining, by governmental action, the importation of foreign manufactures, for the encouragement of manufactures and of all labor at home, and desired and meant to do this by clothing the new Government with this specific power of regulating commerce; required and justified a pretty wide collection and display of their opinions, sufferings, expectations, and vocabulary, from sources the most numerous and the most scattered.

And now, from the bosom of the people holding these opinions, oppres-

sed by these incommodities, nourishing these hopes, determined on this relief, and speaking this language, arose the Constitution; immortal, unchangeable! In fulfilment of these hopes, it embodied the great governmental instrumentality which had been determined on, in the exact language which more than twenty years had made familiar. I say, then, sir, that when the country called the convention together which formed the Constitution, it was the *general design* to confer the protecting power upon the new Government; that the governmental power to regulate trade was generally understood to embrace the protecting power; and it was inserted in the Constitution exactly because that was its meaning.

Before proceeding further in the accumulation of evidence, *ab extra*, of the meaning and objects of this power to regulate commerce, let me pause to attend to some of the reasoning by which the proposition which I maintain has been encountered.

I do not think, then, sir, that any body will deny that, in the commercial, political, and general vocabulary of 1787, and of all the period back to 1764, a discriminating tariff, a tariff discriminating for the protection of domestic industry, was universally called a commercial regulation. Every body will agree that, if at that time it had been written or spoken that England, the States, or any other Government upon earth, had the power to make a commercial regulation or to regulate commerce, it would have been universally understood (such was the settled form of speech) to include the power to make a strict protecting tariff, and that such a tariff would have been one of the most ordinary and most familiar acts in exercise of such power of regulation. But then it will be said that it does not follow that the same language means, in this Constitution, when applied to and asserted of this Government, what it meant every where else, when applied to or asserted of any other Government in the world. England, the States, under the power to regulate commerce, could make a strict and technical protecting tariff: Congress, under the same power, or rather under the same exact form of expression, the same enunciation *in terms* of power, can do no such thing.

Sir, he who asserts this has the burden of proof heavily upon him. Independently altogether of the evidence which I have already presented, to show that the country looked directly to this power of regulating commerce as the precise power under and by which the new Government was to tax or prohibit imports for the encouragement of manufactures; independently of that, when you admit, as you must, that, for more than twenty years before the Constitution was formed, this language was universally current in the Colonies and States; that it had acquired, by force of circumstances, an unusually precise, definite, and well-understood sense; that it had all that time been employed to designate or to include a certain known governmental function; that when applied to England, the States, and all other Governments, it had, in the understanding of every body, embraced a certain species and exercise of power for a certain purpose: when you admit this, and then find it here in the Constitution of this Government, employed to confer a power on it, must you not admit that the presumption is, that it is used in the sense which every body had understood it so long to bear, when applied to other Governments; neither larger nor narrower; that it means to include the same well-known function, and not to exclude it; that it means to communicate the same extent

and the same purpose of power, and not less; the same in quantity, the same in object?

How is this conclusion evaded? I have heard it attempted thus: The powers given by the Constitution to this Government are given *in trust*, to accomplish the specific and few *objects of the Constitution.* The promotion of manufactures is not one of the objects of the Constitution; the promotion of commerce is. The power to regulate commerce, therefore, is given in trust, for the accommodation and promotion of commerce, technically and strictly so called. This, for substance, is the argument of a very able writer in the Southern Review of August, 1830.

Now, sir, waiving for a moment the direct proof *aliunde* which I have produced, and shall produce, to show the exact meaning of this grant of the power of commercial regulation, I answer, that it is true that the powers of the Constitution are given in trust for its objects; that the powers are given in trust for the objects of those powers. But then arises the question, what are the objects of this particular power? What are the purposes which it was inserted in the Constitution to accomplish? You beg the whole proposition in dispute, when you assert that it is no part of the objects of the Constitution to develope the productive capacities of the country, by protecting it from an unpropitious and deleterious foreign commerce, and securing it a beneficial one. The precise question is, if this is not in part the object of this very power? It strikes me, sir, that our opponents on this general question assume, that because commerce is the *subject* on which the constitutional regulations are to operate, that therefore the end and purpose for which these regulations must be made, is the direct and immediate advancement or enlargement of commerce itself, without regard to its qualities or its adverse or propitious influence on the nation by which or with which it is carried on. What else they mean when they say that this power is given with a view to "commerce as an end," I confess I do not know; but surely this is pure assumption, and will not bear a moment's examination. In the first place, they forget that the unlimited terms of the constitutional grant, explained and defined by the historical deduction which I have exhibited, authorize the making of some such regulations as conclusively demonstrate that the object and purpose of the grant is not solely and directly the enlargement of commerce as an end, without regard to the question, what are its imports, or what its exports, or what its influence on the interior labors and prosperity of the country; but rather the *promotion of national prosperity by means of a judiciously regulated commercial intercourse.* The grant is of power to regulate commerce. The grant is general; it is exclusive as well as general. It is a power to prescribe rules by which commerce shall be conducted; it is a power to make commercial regulations. Unless, then, the extent of this grant is limited by other clauses of the Constitution, or by other evidence of an intent to limit it; unless, in some such way, it be shown that there are some commercial regulations, which the Constitution did not mean to authorize you to make, taking the grant by itself, and construing it by the law of grant, it communicates power to make all commercial regulations. It is not a power to make some, but all. It is not a power to do some of the things, to pass some of the laws, which are acts in exercise of a general power to regulate commerce, but to do

them all. It extends to all, or it reaches not one. Well, among them, among the most common and best known regulations of commerce, the most common and best known acts in exercise of a power to regulate commerce, as we have seen, was a discriminating and protecting tariff; a law moulding commercial intercourse in such manner as to invite to the development of domestic labor. The grant, then, communicates a power to make such a regulation among others. It stands precisely as if the constitutional language had been, Congress shall have power to prescribe rules for the regulations of commerce, and among them protecting tariffs. The analysis of the whole complete aggregate of things authorized, reveals this act as one of them. We take, then, by the legal necessary construction of the grant, the power to make a protecting tariff; and the nature of the power itself involves and discloses the object of the power, to wit, protection. The nature of the operation authorized to be performed *on* commerce, evinces that there is an end and purpose in the contemplation of the Constitution *beyond* commerce itself as an end; and that is the national prosperity.

But, in the next place, these reasoners seem to forget that commerce is, from its nature, and was regarded by the people of this country, at the time of the adoption of the Constitution, and by all Governments, and all people then or ever in the world, a mere vast *means* of prosperity, or of decay, to a nation by whom or with whom it is carried on; and therefore that the Constitution, when it clothed you with the general power of regulating it, intended that you should do so with a view to the attainment of those ends, of which, in its nature, and in the opinions of nations, it is capable of being made the instrument. The framers of the Constitution meant to clothe you with the power of disarming it of all the evil and extracting from it all the good to which the wisdom of Government is equal. They could not have intended to do any thing so absurd as simply to authorize and require you to promote, enlarge, or advance commerce, *per se*, and in the abstract, without regard to its quality; to its adverse or its propitious influence upon the prosperity, the morality, the health, and the industry of the people; to the goods it brought home; to the goods it carried away; the national character of the tonnage it employed, and of the labor it rewarded. They did not look to commerce, but to *beneficial commerce*. They saw the distinction perfectly. They regarded it, as did the country universally, and as all nations in all ages have done, as an agent of large and varied influence, sometimes of good and sometimes of evil, according to its nature, and according to the regulations under which it was conducted. They knew, or they believed, that in one form, under one system of regulations, it might strengthen, adorn, and enrich a State; might seat it on the throne of the sea; might raise its merchants to be princes, yet not impoverish and not depress its mechanics and its farmers; might stimulate the thousand hands of its labor by multiplying its occupations, enhancing its rewards, relieving it from oppressive competitions with the redundant capital, matured skill, and pauperism of older nations; might swell its exports with the products of its own skill; might turn in on it the golden stream of the metals, and make it the workshop, as well as the warehouse, of the world: while, in another form, and under another system of regulations, it might impoverish and enfeeble it; drain it of its specie; overstock its agriculture, yet deprive it of a market;

plunge it beneath an insupportable foreign debt, and restrain the division of its labor and the development of its genius. This is the exact view taken of commerce, by the whole American press, from 1783 to 1787.

Commerce, then, in its nature, and the understanding of all, is a means. When, therefore, the general power of regulating it is given to the National Government, according to what principles, for the accomplishment of what objects, are you to exert it? Are you not to do it for those ends, and for all of them, which, by the general theory and practice of Governments, it is adapted to attain? And is not the relief of domestic labor, from the oppressive competitions of an unrestrained foreign trade, among these ends?

Well, now, sir, to answer this reasoning, it must be shown, by inspection of other parts of the Constitution, by an analysis of its general structure, or by evidence *ab extra*, that this grant of power is not so broad. It must be shown, in some such way, that there were some well-known and important commercial regulations; some acts familiarly and notoriously done by all Governments, in exercise of the power to regulate, which were not intended to be granted by the terms of this most comprehensive and most unlimited grant. It must be shown, in some such way, that this pretty important exception ought to be engrafted on the grant: the Congress shall have power to regulate trade with foreign nations, provided, however, *that it shall aim at nothing but free trade;* that it shall have no power to make any, or no power to make all those commercial regulations by which other Governments always endeavored, and the United States of America, since the Revolution, have endeavored, to increase their own tonnage; to make their exports exceed their imports, to avoid a drain of their specie; to preserve a favorable balance of trade; and to draw forth their own capacities of labor and of wealth, and their own means of independence. But can you thus qualify the unalterable and the unlimited terms of the Constitution? How do you do it? You say you reason from other parts, and from the general structure of the instrument; and that no other part of it displays any solicitude for the encouragement of domestic industry, nor does any thing to enable you to promote it. But what is that argument worth, even if the fact were so? Does it abridge the clear and broad terms of this particular grant? Because the Constitution clothes you with no other means of developing the industrial capacities of the country than a discreet, wise, and customary commercial system, do you infer, against its positive terms, that it could not have intended to give you even that means? Might it not give you that, and yet give you no other? Might it not go so far, and no farther? Might it not clothe you with that large and imperial power, without going on to authorize you to prescribe the forms of apprentices' indentures, and determine how many hours in a day the operatives in a woollen mill shall be held to labor? From the nature of the case, is not the selection of powers to be conferred on the General Government, from the whole field of sovereign power, in some measure arbitrary; arbitrary in what is given, arbitrary in what is left? The line must be drawn some where. How it is drawn, in fact, is a matter of pure interpretation. You cannot put your finger upon a granted power, and say if the framers of the Constitution meant to give this; logical and political consistency would have led them to give another; but that they have not given, and therefore they have not

given this. Such reasoning substitutes the fancies of sophists for the text of the Constitution, and turns the guide of life into foolishness and a stumbling block.

And what is there in the general structure of the Constitution, what is there in the nature of the Government established by it, which renders it so improbable that the power of regulating commerce, for the development of native capacity and industry, should be given to it, that you must abridge, by supposition, an apparently express grant of that very power? I say, sir, that the Constitution, in conferring this power on this Government, has been true to itself; it has acted like itself; it has acted in conformity with its peculiar structure, and its grand aims. What is the power, after all? Nothing more and nothing less than a means of defending American industry against foreign instruments of annoyance. Foreign Governments, or foreign subjects, pour in upon us importations of articles which make us poor, or make us idle, or make us diseased, or make us vicious. No Government that ever stood one hundred years on the earth but had the power of defending itself against aggression so deleterious, although in form pacific. To which of the Governments in our system, the State or the National, should the power belong? Reasoning on the nature of our system, and *a priori*, which should possess it? Should it not be that which possesses the treaty-making power; the war and peace-making power; the power of regulating all foreign intercourse? Should the States retain it? Was not the Constitution framed in great measure because they were totally unequal to its effective administration?

In a still larger view, sir, of the offices and the powers of the National Government, under the Constitution, you ought to have this power of protecting the labor of your country. The means, the ends, the principles of determination, pertain appropriately to the imperial and grand trust with which you are clothed. The means are the regulation of foreign intercourse, which all belongs to you. The ends are the independence and the happiness of America. The principles of determination are the most interesting phenomena of the social and political world; the truths of the first of practical sciences, the loftiest and most comprehensive sentiments and aspirations of statesmanship and patriotism. What is it that you do when you exercise this power? Why, sir, you determine by what system of foreign intercourse our vast capacities of growth and wealth may best be developed; the unsightly but precious elemental material that sleeps beneath our soil be transfigured into forms of beauty and use; the children of labor in all their fields be trained through labor to competence, comfort, and consideration; "our agriculture be made to grow, and our commerce to expand;" the golden chain of union be strengthed; our vast destinies unfolded and fulfilled. This is what you do. And I say the means you work by, the ends you aim at, and the policy you proceed on, are just such as such a system as ours should commit to you.

But, sir, to advance from these less certain reasonings to indisputable facts, which indeed I have partially anticipated. I hold it to be susceptible of as rigorous, moral demonstration as any truth of history, 1st, that, before the Constitution was presented to them, the people of this country, generally, demanded a Government which should have power to mould their whole foreign intercourse into the most beneficial form, and, among

other things, should have power to mould it into such form as might bring out American labor, agricultural, mechanical, manufacturing, navigating, and commercial, into its completest development, and for that end to make discriminating tariffs; 2d, that when, at length, the doors of the convention were thrown open, and the Constitution, the object of so many hopes, of so much solicitude, was presented to their eager view, they believed that they found in it just the power they had looked for so long, and they adopted it in that confidence; 3d, that every member of the convention itself supposed it to contain the power; and 4th, that the new Government, from its first organization, proceeded to execute it vigorously and usefully by a broad policy of protection openly avowed—protection of agriculture; protection of navigation; protection of manufactures; and that, although particular exertions of the policy were vehemently resisted on grounds of expediency, and although other national legislation was denied to be authorized by the Constitution, the power to push this policy to the utmost limit of congressional discretion was never called in question for more than thirty, or certainly more than twenty years.

Sir, if this be so, and yet the Constitution contains no such power, vain is the search after moral truth; idle the attempt to embody the ideas of a people in the frame of their Government, and in the language of their fundamental law. You were as wisely employed in writing them upon the clouds of the summer evening western sky, in the dream of seeing them carried round the world in the train of the next day's sun.

Well, is it not so? I have shown you already that the country demanded, and expected beforehand, a Government which should possess this power; that it had done so for years; that the events of every hour, from the peace to the rising of the convention, only increased the urgency of the demand, and the confidence of the expectation. I proceed to show, in the next place, that when at last the Constitution was given to the longing sight of the people, and they threw themselves upon it as a famished host upon miraculous bread, their faculties sharpened and prepared by so many years of discussions, and by the more instructive discipline of suffering, stimulated to read by hope, and fear, and jealousy, and curiosity, then they thought they found in it this power. There it was, in the very language familiar to them from childhood; language associated, fast and imperishably, with the story of the long wrongs of England, the resistance of America, the great names of heroes and wise men, the living and the dead, with liberty, and with glory.

See if the fact is not so, and then see how resistless it is as *evidence* that the power really was there. Look into the press of that day; that day when men were great, and events were great; look into the newspaper press, and tell me if you find, any where, a whisper of complaint of any deficiency *of power in this regard in the new Constitution.* You have heard, in the selections I have read, something of what the people *expected*; do you find, by looking farther into the same source of evidence, that they were *disappointed* in their expectations? Fears there were; sickly fears, patriotic fears; and loudly uttered, that the Constitution was too strong; too strong for liberty. But who said that, in its protecting energy, it was too weak? Who complained that he did not find it clothed with the whole power of defence against other nations; defence against their arms, their policy, their pernicious trade, their extorted and pauper labor? I can only say that I have found no trace of such an objection.

But see the affirmative evidence of a general belief that the Constitution did contain the power. Look at the long processions of the trades, where the whole mechanical and manufacturing industry of the country assembled to celebrate, as a jubilee, the establishment of a Government by which their interests might at length hope to be cherished. Is it not as if the universal heart of the people was throbbing with the sudden acquisition of a second and a real independence? Hear the debates in the conventions of the States, deliberating upon the Constitution. In that of Massachusetts, one of its advocates, urging the importance of making the entire grant of power to Congress which it contemplated, said:

"Our manufactures are another great subject which has received no encouragement by national duties on foreign manufactures, and they never can by any authority in the old confederation. Besides this, the very face of our country leads to manufactures; our numerous falls of water, and places for mills, where paper, snuff, gun-powder, iron-works, and numerous other articles are prepared—these will save us immense sums of money that would otherwise go to Europe. *The question is*, have these been encouraged? Has Congress *been able*, by national laws, to prevent the importation of such foreign commodities as are made from such *raw materials* as we ourselves raise. It is alleged that the citizens of the United States have contracted debts within the last three years, with the subjects of Great Britain, for the amount of near six millions of dollars, and that consequently our lands are mortgaged for that sum. So Corsica was once mortgaged to the Genoese merchants for articles which her inhabitants did not want, or which they could have made themselves, and she was afterwards sold to a foreign power. If we wish to encourage our own manufactures, to preserve our own commerce, to raise the value of our lands, we must give Congress the powers in question."—*Elliot's Debates, vol.* 1, *page* 76.

And again:

"Our agriculture has not been encouraged by the imposition of material duties on *rival* produce, nor can it be, so long as the several States may make contradictory laws."—*Page* 74.

And an opponent, Mr. Widgery, was annoyed by so much earnest repetition and enforcement of this very topic in favor of the new Government. It is perfectly plain that he felt it to be the effective and decisive consideration by which the masses were moved. "All we hear is, (he says,) that the merchant and farmer will flourish, and the mechanic and tradesman make their fortunes directly."

The debates of other States the most interested in this species of industry are imperfectly preserved; but no where, as Mr. Madison has well said, do you find a particle of evidence that a doubt on the power was entertained. "The general objects of the Union," said Mr. Davie, in the Convention of North Carolina, "are, 1st, to protect us against foreign invasion; 2d, to defend us against internal commotions and insurrections; 3d, to promote the commerce, agriculture, and manufactures of America.—*Elliot's Debates, vol.* 3, *p.* 31.

Read the memorials in which the mechanics and manufacturers of the large towns, immediately upon the organization of Congress, invoked an exertion of this power; and see how confidently its existence is assumed, and its prompt and beneficial exercise relied on. Familiar as they are to you, familiar to every body who has examined this question at all, they embody in such vivid and comprehensive expression the grand, popular want and conviction in which the Constitution had its birth, and its instantaneous and universal interpretation, that I venture to call your attention again to a passage from three of them. They were all presented during the pending of the first revenue and protecting law of Congress, and they contributed, I have no doubt, to determine its policy and to shape its details. Hear the "tradesmen and mechanics of Baltimore,"

"Setting forth (I use the condensed summary of the reporter) that, since the close of the late war and the completion of the Revolution, they have observed with serious regret the manufacturing and the trading interest of the country rapidly declining, and the attempts of the State Legislatures to remedy the evil failing of their object; that, in the present melancholy state of our country, the number of poor increasing for want of employment, foreign debts accumulating, houses and lands depreciating in value, and trade and manufactures languishing and expiring, they look up to the supreme Legislature of the United States as the guardians of the whole empire, and from their united wisdom and patriotism and ardent love of their country, expect to deriv e that aid and assistance which alone can dissipate their just apprehensions, and animate them with hopes of success in future, by imposing on all foreign articles, which can be made in America, such duties as will give a just and decided preference to their labors, discountenancing that trade which tends so materially to injure them and impoverish their country, measures which, in their consequences, may also contribute to the discharge of the national debt and the due support of Government; that they have annexed a list of such articles as are or can be manufactured amongst them, and humbly trust in the wisdom of the Legislature to grant them, in common with the other mechanics and manufacturers of the United States, that relief which may appear proper."

This was followed, in a week, by another of the "mechanics and manufacturers of the city of New York," which, having recited that their prospects of improving wealth had been blasted after the peace by a system of commercial usurpation; that trade had been loaded with foreign fetters, enterprise and industry discouraged, the development of the vast natural resources of the country restrained, agriculture without stimulus, and Manufactures, the sister of Commerce, participating in its distresses; that a profusion of foreign articles had deluged the country, presenting a delusive appearance of plenty, and deceiving the people into the mistake that excessive and deleterious importation was a flourishing trade, proceeds:

"Wearied by their fruitless exertions, your petitioners have long looked forward with anxiety for the establishment of a Government which would have power to check the growing evil, and extend a protecting hand to the interests of commerce and the arts. *Such a Government is now established.* On the promulgation of the Constitution just now commencing its operations, your petitioners discovered in its principles the remedy which they had so long and so earnestly desired. To your honorable body the mechanics and manufacturers of New York look up with confidence, convinced that, as the united voice of America has furnished you with the means, so your knowledge of our common wants has given you the spirit, to unbind our fetters and rescue our country from disgrace and ruin."

Then came in the "tradesmen and manufacturers of the town of Boston," who say:

"That on the revival of their mechanical arts and manufactures, now ruinously depressed, depend the wealth and prosperity of the Northern States; and that the citizens of these States conceive the object of their independence but half obtained till these national purposes are established on a permanent and extensive basis by the legislation of the Federal Government."

And who in that assembly of men—many of whom sat in the convention which framed the Convention, all of whom had partaken in the discussions which preceded its adoption, breathed a doubt on the competence of Congress to receive such petitions as these, and to grant their prayer? "I conceive, (said the most eloquent of the eloquent, Mr. Ames)—I conceive, sir, that the present Constitution was dictated by commercial necessity more than any other cause. The want of an efficient Government to secure the manufacturing interest and to advance our commerce was long seen by men of judgment, and pointed out by patriots solicitous to promote our general welfare." But I have more to say, before I have done, on the proceedings of that Congress, and leave them for the present. in the mean time I submit to you that the proof is complete, that the people who adopted the Constitution universally, and without a doubt, believed that it embodied this power. It was for that they received it with

one wide acclaim, with tears of exultation, with ceremonies of auspicious significance, befitting the dawn of our age of pacific and industrial glory. Even those who feared its imperial character and its other powers, who thought they saw the States attracted to its centre and absorbed by its rays, did not fear this power.

And now, sir, I wonder if, after all, the people were deluded into this belief! I wonder if that heroic and energetic generation of our fathers, which had studied the controversies and had gone through the tasks of the Revolution; which had framed the confederation, proved its weakness, proved its defects; which had been trained by a long and dreary experience of the insufficiency of a nominal independence to build up a diffused, and massive, and national prosperity, if the trade laws of foreign Governments, the combinations of foreign capitalists, the necessities of foreign existence, are allowed to take from the native laborer his meal of meat, and from his children their school, and depress his standard of comfortable life; which had been trained by experience, by the discussions of its ablest minds, in an age of extraordinary mental activity, and yet of great morality, sobriety, and subordination, peculiarly favorable to the task: trained thus to the work of constructing a new Government, I wonder if such a generation were deceived, after all! I wonder if it was not living water, that which they supposed they saw gushing from the rock, and sparkling and swelling at their feet, but only a delusive imitation, struck out by the wand of an accursed enchantment! No, sir; no man who believes that the people of this country were fit to govern themselves; fit to frame a Constitution, fit to judge on it, fit to administer it; no such man can say that the belief, the popular belief in 1789, of the existence of this power, under all the circumstances, is not absolutely conclusive proof of its existence.

And then, in addition to this, how do you deal with the fact that all the framers of the Constitution themselves, as well as every public man alive in 1789, and the entire intelligence of the country, supposed they had inserted this power in it?

Did not those who made it know what they had done? Considering their eminent general character, their civil discretion, their preparation of much study and yet more experience of arduous public affairs for the task; their thorough acquaintance with the existing systems, State and national, and with the public mind and opinions of the day; the long, patient, and solitary labor which they bestowed on it; the immediate necessity imposed on them of explaining and defending it to the country: in view of this, if you find them unanimously concurring in ascribing this power to the instrument, is it not the transcendentalism of unbelief to doubt? Do we really think we are likely to understand their own work now better than they did the day they finished it?

Well, sir, you have satisfactory evidence that the members of the convention went, all of them, to their graves in the belief that the Constitution contained this power. Mr. Madison's opinion I have read. We have it on unquestionable authority that Mr. Gallatin has repeatedly said that, upon his entrance into political life in 1789, he found it to be the universal opinion of those who framed the Constitution and those who resisted its adoption, the opinion of all the statesmen of the day, that Congress possessed the power to protect domestic industry by means of commercial

regulations. Stronger proof to this point, indeed, you cannot desire than is afforded by the history of the first revenue and protection law of the Federal Government. Let me recall that history a little in detail. Considering how many members of that Congress had sat in the convention; that all the members of the convention were still alive, and still observers of what was passing on the public stage; how anxiously the whole people, now divided into two great and already excited parties, and the several local regions of the country, developing already the antagonism of their policy, were looking on: in this view, the express affirmation by some, and the tacit universal concession by others, of this power, in every stage of the protracted and anxious debate which resulted in that law, ought to be conclusive on the question of its existence with every sound mind. But observe its history.

It was Mr. Madison who, on the ninth of April, introduced the subject of providing a revenue by imposts. And it is very material to remark that his original purpose was to pass a strict and temporary revenue law, and to pass it immediately, in order, as he said, to intercept the importations of the spring. Accordingly he took, as the basis of his measure, the propositions of the Congress of the Confederation of 1783. Those propositions imposed a general and uniform *ad valorem* duty on the whole mass of imported articles, except spirituous liquors, wines, sugars, teas, molasses, cocoa, and coffee, which were charged with higher and specific duties. This old scheme of imposts Mr. Madison proposed to adopt as the basis of the new law, engrafting on it only a tonnage duty discriminating in favor of American vessels. His purpose, therefore, you perceive, as I have said, was *revenue* purely, and not *a commercial regulation for protection.* Not one of the articles on which the specific and higher duties would have been laid, and were laid, under this old model scheme, were produced in the United States, except rum. The discrimination was for revenue, and the whole measure was for revenue. Indeed, Mr. Madison said, on introducing it, in so many words:

"In pursuing this measure, I know that two points occur for our consideration. The first respects the general regulation of commerce, which, in my opinion, ought to be as free as the policy of the nations will admit. The second relates to revenue alone; and this is the point I mean more particularly to bring into the view of the committee. Not being at present possessed of sufficient materials for fully elucidating these points, and our situation admitting of no delay, I shall propose such articles of regulations only as are likely to occasion the least difficulty. The propositions made on this subject by Congress in 1783, having received, generally, the approbation of the several States of the Union, in some form or other, seem well calculated to become the basis of the temporary system which I wish the committee to adopt. I am well aware that the changes which have taken place in many of the States, and in our public circumstances, since that period, will require, in some degree, a deviation from the scale of duties then affixed; nevertheless, for the sake of that expedition which is necessary in order to embrace the spring importations, I should recommend a general adherence to the plan."

And later in the debate he said:

"It was my view to restrain the first essay on this subject principally to the object of revenue, and make this rather a temporary expedient than any thing permanent."—*Gales & Seaton's Debates, old series, vol.* 1, *pp.* 107, 115.

But what followed? The next day, Mr. Fitzsimons, of Pennsylvania, presented a suggestion which resulted in a total departure from Mr. Madison's plan, *and in the substitution for a pure and temporary revenue law* of a *permanent law*, which was at once and avowedly a *measure of revenue* and a *commercial regulation for the encouragement and protection of*

*American agriculture, navigation, and manufactures;* at once an exercise of the power of taxing imports and the power to regulate trade; at once, in the terms of its own preamble, an act "for the support of Government, the debt of the United States, and the encouragement and protection of manufactures." He began by saying:

"I observe, Mr. Chairman, by what the gentlemen have said, who have spoken on the subject before you, that the proposed plan of revenue is viewed by them as a temporary system, to be continued only till proper materials are brought forward and arranged in more perfect form. I confess, sir, that I carry my views on this subject much further; that I earnestly wish one which, in its operation, will be some way adequate to our present situation, as *it respects our agriculture, our manufactures, and our commerce;*"

and concluded with a motion, that there be added to the few articles which Mr. Madison had proposed to subject to specific duties, and duties above the general average, *more than fifty others*, which should be also specifically and more highly taxed. Forty-five of these were of the class of articles produced or manufactured in the United States; they were articles coming in competition with almost the entire circle of American manufacturing and agricultural labor; and they were subsequently so increased as to surround that whole circle with a protecting tariff.

This proposition of Mr. Fitzsimons was made for the purpose of uniting the objects of protection and revenue. He avowed this to be his object. "Among the articles," said he, in introducing his motion, (page 111,) "which I would have specifically taxed, are *some* calculated to encourage the productions of our country, and protect our infant manufactures; besides others tending to operate as sumptuary restrictions upon articles which are often termed those of luxury." So he was understood by every body. Mr. White, of Virginia, who followed him next in the debate, in opposition to his amendment, suggested that its consideration would consume too much time, "for," said he, (page 112,) "in order to charge specific articles of manufacture, so as to encourage our domestic ones, it will be necessary to examine the present state of each throughout the Union." Mr. Tucker, of South Carolina, following him in opposition, "considered the subject of very great importance, as it related to our agriculture, manufactures, and commerce," but advised a temporary, immediate arrangement. Upon this, Mr. Hartley, of Pennsylvania, submitted a brief, but very clear and very sound, argument directly in favor of the policy of protection. He differed from those who preferred a "limited and partial" measure "relating to revenue alone," and advised to place the whole "on as broad a bottom as at that time was practicable." He thought the argument of Mr. Tucker ought not to "discourage the committee from taking such measures as would tend to protect and promote our domestic manufactures." "The old world," he proceeded, "had long pursued the practice of giving great encouragement to the establishment of manufactures, by such partial duties on foreign imports as to give the home manufactures a considerable advantage in the price in market; and it was both politic and just that the General Government should do the same thing. Our manufactures had arrived at that stage of advancement, that, according to the policy of every enlightened nation, they ought to receive the encouragement necessary to perfect them without oppressing the other parts of the community." In this posture of the debate, Mr. Madison again rose, and, in a speech of considerable elaborateness, declared, at length, that he thought Mr. Fitzsim-

ons's proposition ought to be entertained. "Upon the whole," he said, concluding his observations, "as I think some of the propositions may be productive of revenue, and some may protect our domestic manufactures, though the latter subject ought not to be too confusedly blended with the former, I hope the committee will receive them, and let them lie over, in order that we may have time to consider how far they are consistent with justice and policy."

The motion of Mr. Fitzsimons was thereupon immediately adopted; the bill was transformed into a measure of blended revenue and protection; other articles were subsequently added to the class of articles specifically taxed, or taxed by discrimination above the general ad valorem; the rates of duties were arranged; and, after a discussion of extraordinary interest, ability, excitement, and importance, running through three months, the first Congress of the new Constitution, at its first session, its very first measure of general legislation, its first measure of any kind, after having declared, by law, in what manner its members should swear to support the Constitution, passed an act to raise revenue; and also to fulfil to the whole, vast, young, and anxious family of American labor; to the agriculturer of the South and West; to the fisheries and the navigation of the East; to the mechanical trades of the cities; to the manufacturing industry of the central, and all the States; to fulfil to all, to the cotton, indigo, and hemp grower; to the grain grower and grazier; to the builder of vessels, and the fisherman; to the manufactures of leather, clothing, cordage, iron, glass, paper, wood; to fulfil to all something of the promise of the new Government, and to extend to all some portion of the security and the stimulus of a real national independence. And now, pause for a moment; and appreciate the light which the history of that act sheds upon the constitutional opinions of that Congress; and what inferences those opinions suggest regarding the true meaning of the Constitution.

Sir, the doctrine of the extreme South, I mean rather the extreme doctrine of the South, confined I hope to few, is, that you can impose duties for revenue only; that, in doing so, you may discriminate to be sure, but only for purposes and on principles of revenue as such, laying a low duty or a high one, a specific or an ad valorem, accordingly as one or the other will yield the most revenue at the least expense and with the most certainty. If such a scheme of duties unintentionally (for if you intended the result it avoids the whole) aids the manufacturer or mechanic, well and good; if not, let him take care of himself. This, they say, is *incidental protection*, and it is all the Constitution authorizes! But was this the doctrine of the first Congress? I say, on the contrary, that, in its main structure and its substantial character, the act whose history I have detailed was an act for protection as the principal, and for revenue as the incident; that, although at first designed for revenue only, it was wholly reconstructed with another object as the leading object, not indeed inconsistent with revenue, rather in aid of it, intended to be in aid of it, but obtaining it, so far as *purpose* was concerned, incidentally; that, from the beginning to the end, the power of affording protection *directly, as an end, as a main purpose*, was assumed by every body, and that it was that power which every member must have considered himself exerting, in more than three-quarters of all the legislation which was finally embodied in the law. True undoubtedly it is, that all the revenue which the act in its final form could

be made to yield was needed by the young Government. True it is, therefore, that, in my judgment, this act is not a precedent for bringing, with a view to protection, more money into the Treasury than you require for the wants of Government. But for discrimination, with a view to protection; for admitting some things free, as materials of manufacture, some under specific duties and some under ad valorem, some under low duties and some under high, for the purpose of protection; for rejecting a measure, efficient and suitable as a revenue measure, precisely because it did not recognise and did not secure protection, and substituting one which did; for putting forward protection as a great object of national policy, of somewhat more consequence than the idle and childish symmetry of horizontal tariffs; for treating a protecting tariff itself as a commercial regution, and to be referred to the power of regulating commerce; for *this* it is a precedent, and a precedent belonging to a better age, sanctioned by a higher authority, than almost any other in our whole series of national legislation.

Observe, sir, how the mere pursuit of revenue was made to yield to other considerations. Mr. Madison thought that, *for the purposes of revenue*, more was lost than gained by seeking to unite the other object.

"I presume," said he, "that however much we may be disposed to promote domestic manufactures, we ought to pay some regard to the present policy of obtaining revenue. It may be remarked, also, that, by *fixing on a temporary expedient for this purpose, we may gain more than we shall lose by suspending the consideartion of the other subject* until we obtain further information of the state of our manufactures. We have at this time the strongest motives for turning our attention to the point I have mentioned. Every gentleman sees that the prospect of our harvest from the spring importations is daily vanishing; and if the committee delay levying and collecting an impost until a system of protecting duties shall be perfected, there will be no importations of any consequence on which the law is to operate, because by that time all the spring vessels will have arrived. Therefore, from a pursuit of this policy, *we shall suffer a loss* equal to the surplus which might be expected from a system of higher duties."

Yet that Congress held the loss of duties on spring importations a trifle, in comparison of permanently and systematically sustaining the great interests of domestic labor. Observe, too, and this is a consideration of great importance, where you are inquiring after the *constitutional opinions* and the *quo animo* of legislators, that, in making the successive additions of protected articles, and in fixing the duties upon them, and throughout the whole attempt to recast the original bill, no man assigns revenue, but every man assigns *protection* as his motive and object. I have read the grounds on which Mr. Fitzsimons and Mr. Hartley pressed and carried the original motion. Subsequently, on motion of others, other articles were successively subjected to the specific and higher duty; and every one of them for the avowed object of protection, not one for the avowed object of revenue. Sir, the arguments for the steel, cordage, molasses, beef, hemp, and tonnage duties, are exactly the arguments of those who, in 1816, 1820, 1824, built up that later and more developed policy which you call the American system, an anticipation in effect of the substance and language of those great debates.

Let me remind you now how pregnant the fact is, that not a doubt was whispered on any side about the constitutional power of Congress to think and do so much for protection. The policy of many of the provisions of the bill was vehemently controverted. The cordage duty, the tonnage duty, the duties on molasses, beer, tallow candles, steel, of which Mr. Madison observes, "the object of selecting this must be solely the encour-

agement of the manufacture and not revenue," (page 154,) hemp, nails, coal, were successively, and some of them keenly resisted; they were urged on the sole ground of protection, yet no man whispered a suspicion on the power. I should more nearly express the fact, if I said that every body committed himself in favor of the power. Virginia asked protection for her coal, and prohibition for her beef; and South Carolina "was willing to make sacrifices to encourage the manufacturing and maritime interests of the sister States," but asked protection *for hemp*, which, Mr. Burk said, "her low, strong, rice lands produced in abundance." To appreciate, to approach at all the strength, significance, and universality of this fact you must meditate the entire debate. But read at least Mr. Madison's principal speech, upon Mr. Fitzsimons's first proposition. I would rather look there for his constitutional opinions, undesignedly announced, silently assumed as matter incontrovertible, and conceded by all, running underneath and upholding the whole structure of his thoughts upon the general subject, than even to his letter in 1828, written after a controversy had arisen, and age, and intervening events and cares, might have worn the earlier impression, in any degree, away. Let me open to you the leading idea of that speech, and leave it to you to see for yourselves how he developes it. The proposition of Mr. Fitzsimons, then, he suggested, made it necessary to consider, not merely temporary expedients of revenue, but the principles of a commercial system. He had intended to regard revenue alone, but the proposition led to, and would result in, "the general regulation of commerce," (pp. 107 and 116.) Observe, sir, the moment it was suggested to blend protection and revenue, he thought himself engaged in a general *regulation of commerce.*

What, then, he proceeded to inquire, are the true principles of a commercial system? The first and the general rule is, to have it *free;* as free as possible. He supports this briefly and forcibly. But there are exceptions to the rule, he declares, and he proceeds to enumerate them. And what are they, in his judgment? The first embraces discriminating provisions for the protection and encouragement of American vessels; the second, duties on imports to sustain or to develope manufacturing industry; the third, sumptuary prohibitions, which, however, in any form but sumptuary duties, he disapproves; the fourth, embargoes in time of war; the fifth, provisions for encouraging the production within the nation of all its military supplies; the sixth, duties for revenue. These are exceptions, he argues, by which we may wisely restrict the general freedom of commerce. These exceptions we have the constitutional power to engraft upon our general law of free trade. We may restrain it to encourage American ships, and other American manufactures, for the uses of peace or war; to check luxury; to withdraw our too adventurous commerce from the grasp of an enemy; and to supply a revenue for the wants of Government. I commend to your own reflections this enunciation of the general principle of commercial regulations, and of the exceptions to it; the affirmation which it involves of the constitutional power of protection; the separation of the protecting and of the revenue power from one another, and the enumeration of each as substantive and distinct; and his acquiescence in Mr. Fitzsimons's proposition to unite the exercise and the objects of both powers in one law, "although he, Mr. Madison, thought the two objects ought not to be too confusedly blended;" I commend all

this to you, who would know his opinions on this part of that greatest work of his own hands, or of any man's; the Federal Constitution.

I have said that no man then denied the power. Mr. Ames, I have reminded you, expressly affirmed it. No newspaper denied it. The usurpations, imaginary or real, of the two first administrations upon the Constitution; their alleged usurpations; brought into life the party of State-rights and of Democracy; but, through all that tremendous contest, which ended in the revolution of 1801, no man accused them for having dared to protect the planter, the farmer, the fisherman, the mechanic of America. No one laid that sin to their charge. The system of practical protection, founded by the framers, and in the age, of the Constitution and of Washington, grew with the growth, and strengthened with the strength of the nation. Every President, every Congress, almost every public man, approved it; it went on widening its circuit, increasing its energy, and multiplying its beneficial effects, but never changing its nature, or its aims, for more than thirty years, when a subtle and a sectional metaphysics suddenly discerned that it was all a fraud on the Constitution.

It is one of the bad habits of politics, which grow up under written systems and limited systems of government, to denounce what we think impolitic and oppressive legislation as unconstitutional legislation. The language is at first rhetorically and metaphorically used; excited feeling, producing inaccurate thought, contributes to give it currency; classes of States and parties weave it into their vocabulary, and it grows into an article of faith. I have not a doubt that such is the origin of this heresy.

Look, then, over the whole field of view which we have traversed. The terms of the Constitution, interpreted by the most indisputable and universal use of language of the time and country, expressly grant the power. For years the whole people, men of business, statesmen, speculatists, the masses, all, had demanded a Constitution which should contain the power under those precise terms; and they adopted it, in the belief, and in a substantial sense, *for the reason* that it satisfied that demand. The master workmen by whom it was constructed, the entire contemporary intelligence and statesmanship, supposed it contained the power. With the very first breath it drew, the new Government, in the age of Washington, Madison, Hamilton, Adams, and Jefferson, and with their approbation, entered upon its declared exercise; and for more than thirty years its existence was universally admitted.

I propose no more, sir, than to suggest the general nature and main points of an argument familiar to the thoughts of Senators. To my mind it is conclusive. Exercise the power or not, as you deem best for the good and glory of your country, but do not deny its existence, lest you accuse that energetic and heroic generation, which gave us independence and the Constitution, of delusion, fraud, and folly, such as never disgraced any age or race of men before!

I said, Mr. President, that Congress had the power, and that it was their duty also, to afford adequate protection, in this exigency, to the entire labor of the country. Something I could wish to add upon this great duty; but perhaps it may better be reserved until we have, as I earnestly hope we soon shall have, a practical measure before us. I trust even that it may be unnecessary to urge its performance on you at all. The mode, the degree in which it shall be performed, may disclose diversities of

opinions; on this we shall stand in need of mutual forbearance and indulgence; but, on the solemn and peremptory character of the duty itself, how can we differ? Take counsel of the "ancient prudence;" survey the subject in the spirit of the Congress of 1789; purify your minds of the suggestions of a transient expediency, and of a small and local jealousy, by recalling and meditating anew the grand objects for which you know the Constitution was framed; and we cannot differ!

If our trivial and timid manufacturing and mechanical arts, at the organization of the Government, not much further out of ground than this premature green grass of the month of March; were not below the care of such a Congress as the first, how much more worthy of yours is this diversified and yet sensitive industry, which sends its roots and branches every where, but which a storm or a frost would prostrate and kill in an hour! Is that vast circle of employments, which gives to more than 800,000 operatives the means of a comfortable and respectable life; in which nearly 300 millions of capital are invested directly; which supplies one-tenth of all our exports, more in value than the export of rice and tobacco together; feeds our coasting trade, a nation's best trade, or certainly our best; animates, in a hundred-ways, the sister or the parent art of agriculture, by keeping up its prices, by turning away from its cultivation the crowds who would over-stock it, and by opening to its great staples of cotton, rice, flour, meats, and wool, a market at home, steady, growing, sure; which policy, or unkindness, or the storms of war, cannot close: is that too inconsiderable in the mass of the national policy to deserve your regard? And yet, is that interest by the side of England any thing more than an infant, which her statesmen and capitalists cooly talk of "stifling in the cradle," and which thrives and lives by your care alone? If forty years ago, when we had a continent to plant, and so few to do it, and with a whole ocean unoccupied, occupied only for war, inviting us to go forth and carry on the commerce of the world with scarcely a competitor, sound policy was thought to require the establishment of this industry, how much more now, when we have arrived at the period, in the course of national advancement, in which it should, in the process of things, begin to take root, and when the condition of all our other occupations so impressively urges us to make the most of this for the benefit of all? If the exhausting importations of foreign goods; the overwhelming accumulation of foreign debt; the drain of specie to pay the foreign creditor; the derangement of American currency; the transportation of American produce in foreign ships; the antagonist regulations of foreign policy, and the consequent depression of all employments; were reasons for making the Constitution, are not the same things a reason to day for administering it in its whole energy? If so, many successive Presidents, Congresses, administrations, have invited, aye, compelled the investment of so much capital in this industry, and connected the labors, hopes, the daily livelihood, the whole scheme of life of so many thousands, their own, their children's, inextricably with it, does it not impose the duty of steady, just, and parental protecting legislation on you? Did you really mean in 1833, when you framed the compromise act, that if, unexpectedly, American industry, or one single branch of it, could not live under its ultimate reduction, to let it perish? We told you then that it would endanger the whole system of domestic labor, and that some portions, and they the most pre-

cious, the most popular, the first in favor from the date of the Government, woollens, the production of wool, the manufactures of leather, paper, glass, sugar, iron, hats, wood, cotton printing, the whole cotton manufacture in the hands of moderate capitalists, would be destroyed by it. You differed from us; but do you not mean to admit us to the proof, that our predictions were true? Your compromise does not prevent your replenishing the Treasury of the Government: shall it prevent your protecting the labor of the people? Will you suffer the country to lose in a year all that it has slowly gained in twenty? Will you squander away the skill which has been acquired; break up your machinery, or send it to the East Indies; close the door to a hundred useful occupations just as men have learned how to pursue them; put your whole scale of prices, which the establishment of every manufacture at home has regularly reduced and steadied, into the hands of the experimental capitalists of England, to lower and raise at their pleasure? No, sir; no, sir. You will hear the proofs and the discussion with patience; and you will decide with wisdom.

Let me say, Mr. President, in a spirit of the utmost respect to the opinions of Senators, that, if there is any power of the Constitution, I do not know that there is any, which it might be prudent to suffer to slumber, and, as I have heard it expressed, *to die out*, it is not this. No, sir. Desirous always, and determined to administer it moderately, discreetly, justly; throwing no burden of discrimination on the South which the North does not at least equally feel; keeping the aggregate amount which it shall yield to the Treasury in subordination to the wants of Government, efficiently and wisely administered; clothing it, if that is preferred, under the forms, the name, and the reality, of a measure of revenue with discriminations for protection, giving all up but the practical, sufficient, and sure protecting energy itself; that I would never give up. No, sir; the power which this whole country with one voice demanded to have inserted in the Constitution, and which they hailed as another declaration of independence; the power by which we are able to protect all our children of labor, on whatsoever fields they wipe the sweat from their brow; by which, as Washington foretold, we may hope to bind these States together, to run the race of freedom, power, enjoyment, and glory with the nations, and to afford the example of a people, now counted by millions, every one of whom has work to do, and good pay for his work; this power must not be surrendered, must not sleep, till the Union flag shall be hauled down from the last mast head! That sight, I trust, neither we nor our children, to the thousandth generation, are doomed to see.